

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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BAXTER BAILEY AND
ASSOCIATES, INC.,

Plaintiff,

v.

AG LIGHT AND SOUND, INC.,

Defendant.

Case No. 2:22-cv-00794-MMD-VCF

ORDER

This action involves a dispute about payment of debt owed for delivery of materials and equipment that Defendant AG Lighting and Sound, Inc. (“AG”) provided for a Halloween event referred to as Freaky Deaky. New Direx Incorporated provided the delivery services and later assigned its rights to collect on any debt owed to Plaintiff Baxter Bailey and Associates (“Bailey”), who filed this case to attempt to collect on that debt. (ECF No. 1.) Trial is set for February 13 and 14, 2025. (ECF No. 57.) Before the Court is AG’s second¹ motion to continue the trial.² (ECF No. 58 (“Motion”).) Like Bailey, the Court expresses its sincere and utmost sympathy to AG’s counsel. But as further explained below, the Court will deny the Motion—and trial will proceed as scheduled.

AG’s counsel primarily argues that the Court should continue the trial because she continues to suffer from significant mental and physical health challenges that have rendered her basically unable to keep up with the work required to represent her client throughout her involvement in this case and asks for as long a continuance as the Court will permit because she continues to suffer from these health issues. (ECF No. 58.)

¹The Court denied a similar, oral motion that AG’s counsel made at calendar call. (ECF No. 57.)

²Bailey filed a response. (ECF No. 59.)

1 Bailey's response hits the right note because it leads with sympathy for AG's counsel's
2 plight. (ECF No. 59.) Again, the Court similarly feels sympathetic towards AG's counsel
3 and hopes she can get the help she needs. But Bailey makes several persuasive
4 arguments as to why the Court should not further delay the trial. Bailey first argues that
5 AG, not just its counsel, has been responsible for repeated delay in this case and bears
6 some responsibility for choosing to be represented by its own employee who cannot keep
7 up with the work required. (*Id.* at 3-4.) Bailey next argues it is unfortunately unclear from
8 the Motion how a continuance would be helpful. (*Id.* 4-5.) And Bailey finally argues, after
9 noting that further delay would prejudice it, that the parties and the Court would have been
10 better able to address the issues arising from AG's counsel's health issues if they were
11 fully disclosed months ago instead of at the calendar call. (*Id.* at 5-6.) The Court agrees
12 with Bailey.

13 A scheduling order has been in place in this case for some time. Indeed, it was
14 most recently extended in December 2022. (ECF No. 14.) This case has also been set
15 for trial since June 21, 2024. (ECF No. 47.) Thus, the "schedule may be modified only for
16 good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4). AG has not shown
17 good cause to further modify the schedule.

18 AG's conduct (not just its counsel's) has caused substantial delay throughout this
19 case. AG failed to timely submit a settlement brief even after United States Magistrate
20 Judge Maximiliano D. Couvillier, III gave it several chances. (ECF Nos. 23, 28, 29, 30,
21 31, 32.) What's worse, AG never sent an appropriate client representative to the
22 conference. (ECF No. 32.) This led Judge Couvillier to recommend that AG be held in
23 contempt and later to impose monetary sanctions. (ECF Nos. 33, 34, 36, 39.) Judge
24 Couvillier imposed those sanctions on AG, not its counsel. (ECF No. 39.) Judge
25 Couvillier's imposition of monetary sanctions led the Court to decline to hold AG in
26 contempt—reflecting lenience on the Court's part and in AG's favor. (ECF No. 44.) AG
27 then missed the deadline to file the joint pretrial order and the Court had to issue several
28 orders before ultimately setting the case for trial despite AG's persistent noncompliance.

1 (ECF Nos. 38, 43, 46, 49, 51, 52.) AG then missed the deadline to respond to Bailey's
2 motion in limine, leading the Court to grant it. (ECF No. 56.) AG even missed the deadline
3 to file the Motion the Court imposed at a hearing earlier this week. (ECF Nos. 57, 58.)
4 The Court is nonetheless entertaining the Motion on its merits. And more broadly, the
5 Court has given AG many chances to comply with various orders—only for AG to miss
6 more deadlines.

7 Further delay harms Bailey and continues to benefit AG. After all, Bailey filed this
8 case to collect on a debt it contends AG still owes. (ECF Nos. 1 (Complaint), 22 (denying
9 both sides' motions for summary judgment).) AG contends it does not owe the debt. (ECF
10 No. 22 at 2.) More delay means that AG has not paid the debt that Bailey contends it
11 owes. At some point, the delay must end, and the Court must resolve this dispute. And in
12 general, the prejudice that Bailey suffers from continued delay also weighs in favor of
13 denying the Motion.

14 It is also unfortunate but notable that nothing in the Motion suggests an alternate
15 path that could lead this case to final resolution. Indeed, AG requests nothing more than
16 as much delay as the Court will allow. But because it is unclear how further delay would
17 resolve any of the issues AG's counsel lays out in the Motion, the Motion does not
18 demonstrate good cause for further delay.

19 Moreover, the Court would have been better able to address some of the issues
20 raised in the Motion if they had been presented to the Court earlier. But the fact that they
21 were not fully raised until after calendar call further weighs in favor of denying the Motion.

22 Finally, the Court agrees with Bailey's counsel that the issues presented for the
23 Court to resolve at the scheduled bench trial are not complex. The Court already informed
24 the parties that it will not entertain opening arguments and that the parties may start the
25 trial with witness testimony. Trial is expected to last no more than two days. Plaintiff plans
26 to call two witnesses. And even if AG plans to call the same number of witnesses that
27 counsel identified during calendar call, their testimonies will unlikely be lengthy. In other
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1 words, the time remaining until the scheduled trial should allow for AG and its counsel to
2 adequately prepare.


3 In sum, the Court denies the Motion because AG has not shown good cause for a
4 continuance.

5 The Court notes that the parties made several arguments and cited to several
6 cases not discussed above. The Court has reviewed these arguments and cases and
7 determines that they do not warrant discussion as they do not affect the outcome of the
8 Motion before the Court.

9 It is therefore ordered that Defendant AG's second motion to continue the trial
10 (ECF No. 58) is denied.

11 It is further ordered that the trial will commence as scheduled on February 13,
12 2025. (See ECF No. 57.)

13 DATED THIS 24th Day of January 2025.

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18 MIRANDA M. DU
19 CHIEF UNITED STATES DISTRICT JUDGE
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